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PRE-APPEAL BRIEF REQUEST FOR REVIEW		Docket Number (Optional) <u>3P 1791</u>	
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		First Named Inventor <u>HANSEN</u>	
		Art Unit <u>2684</u>	Examiner <u>NGUYEN, TU</u>
Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.			
This request is being filed with a notice of appeal.			
The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.			
I am the		<u>Timothy W. Markison</u> Signature	
<input type="checkbox"/> applicant/inventor.		<u>TIMOTHY W. MARKISON</u> Typed or printed name	
<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)		<u>808 665-1725</u> Telephone number	
<input checked="" type="checkbox"/> attorney or agent of record. Registration number <u>33,534</u>		<u>8/3/05</u> Date	
<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____			
NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.			
<input checked="" type="checkbox"/> *Total of <u>1</u> forms are submitted.			

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**PATENT APPLICATION  
IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

<b>Applicant:</b> Hansen	<b>Examiner:</b> Nguyen, Tu
<b>Serial No:</b> 09/997,938	<b>Art Group:</b> 2684
<b>Filing Date:</b> 11/30/2001	<b>Docket No:</b> BP 1791
<b>Title:</b> TRANSMIT POWER CONTROL OF WIRELESS COMMUNICATION DEVICES	

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**Pre-Appeal Brief Request for Review**

1. In the Office Action dated April 7<sup>th</sup>, 2005, the Examiner rejected claims 8, 10-12, 21, 23 and 33-35 under 35 USC § 102 (b) as being anticipated by Whitehead (U.S. Patent No. 5,732,077); claims 1-2, 5-7, 13-14, 17-18, 24-25, 29 and 32 under 35 USC § 103 (a) as being unpatentable over Whitehead (U.S. Patent No. 5,732,077) in view of Deluca (U.S. Patent No. 5,144,296) and claims 3, 9, 15, 19-29, 27-28, and 30 under 35 USC § 103 (a) as being unpatentable over Whitehead (U.S. Patent No. 5,732,077) in view of Deluca (U.S. Patent No. 5,144,296 and further in view of Park (U.S. Patent No. 6,212,364). Applicant respectfully believe that there is a clear deficiency in the prima facie case in support of this rejection and requests review of the allowability of claims 1-3, 5-15, 17-25, 29, 30, and 32-35 pursuant to the Pre-Appeal Brief Pilot Program.

2. Claims 8, 10-12, 21, 23 and 33-35 have been rejected under 35 USC § 102 (b) as being anticipated by Whitehead (U.S. Patent No. 5,732,077). In general, the Examiner stated that the Figure 4 and the corresponding text of Whitehead anticipate the present claims. The applicant respectfully disagrees with the present rejection because at least one claim element is not met by this reference.

In claim 8, the targeted device measures the signal strength and provides it to the transmitting device. The transmitting device determines the adequacy of the transmit power level based on the signal strength.

In contrast, Whitehead teaches that the receiver makes the determination of whether the transmit power should be adjusted. Examiner's attention is drawn to the following paragraph from the Summary of the Invention section of Whitehead, Col. 3 lines 7 – 30.

When a sending station on a WLAN wants to transmit one or more data packets to a receiving station on the same WLAN, a REQUEST/PERMIT handshaking exchange takes place between the two stations. In that exchange, the sending and receiving stations advertise not only packet identification and packet length information, as in standard RTS/CTS, but also power levels and other interference-related information. **Most important, the receiver advertises the maximum allowed interference for the expected packet. Specifically, the intended receiver of a packet determines whether the packet will be transmitted, and if so, the particular power level at which the sending station is authorized to transmit the packet(s).** The receiving station knows a particular signal interference ratio that is required for successful reception of the packet based on current interference measurement that is performed by all stations, and that is predicated on information, such as received-signal-strength indication (RSSI), path-gain measurement, and the power constraint list. In accordance with the principles of the invention, the sending station is allowed to transmit a data packet only when the intended receiving station determines that the data packet can be sent at an adequate power level, and can still avoid interfering with any other packets being communicated between other pairs of sending and receiving stations. [*emphasis added*]

Claim 8 clearly recites that the targeted device measures the signal strength and provides it to the transmitting device and that the transmitting device determines the adequacy of the transmit power level based on the signal strength. In particular, claim 8 provides the steps of:

determining, by the targeted wireless device, signal strength of the packet received via the wireless channel to produce a determined signal strength;

transmitting, by the targeted wireless device, the determined signal strength of the packet to transmitting wireless device,

determining, by the transmitting wireless device, adequacy of the first power level based on the determined signal strength;  
[emphasis added].

Because Whitehead teaches that the receiver makes the determination of whether the transmit power should be adjusted, and specifically fails to suggest or teach that the transmitting wireless device determines the adequacy of the first power level based on the determined signal strength, the applicants believe that claim 8 and claims 9-12 that depend therefrom are in condition for allowance and respectfully request that they be passed to allowance.

Claims 21 and 33 include similar limitations to claim 8, which has been shown to overcome the present rejection. The applicant believes that the same reasons that distinguish claim 8 over the cited prior art are applicable in distinguishing claims 21 and 33 over the same art. The applicants believe that Claims 21, 33 and 23-24, 34-35 that depend therefrom are in condition for allowance and respectfully request that they be passed to allowance.

3. Claims 1-2, 5-7, 13-14, 17-18, 24-25, 29 and 32 under 35 USC § 103 (a) as being unpatentable over Whitehead (U.S. Patent No. 5,732,077) in view of Deluca (U.S. Patent No. 5,144,296). The applicant respectfully disagrees with the present rejection because, (a) at least one claim element is not met by this combination, and (b) examiner has failed to show proper motivation for making this combination.

In general, the Examiner states that Deluca supplies the feature of determining whether the “decoding information is within an acceptable range of error rate.” However, Examiner fails to address that Deluca does not disclose determining, by the targeted wireless device, a second power level for the transmitting wireless device such that the signal strength is within the acceptable range of signals strengths and the decoding error information is within the acceptable range of error rate, as recited by Claim 1.

Deluca’s invention is directed toward the conservation of battery power in a communication receiver. When a hard decoding error is detected, the supply of power to the receiver suspended. Deluca’s receiver does not disclose determining, a second power level for the transmitting wireless device such that the decoding error information is within the acceptable range of error rate. Deluca’s receiver does not disclose determining any power level for any other device based on decoding information. For this reason alone the applicants believe that claim 1, and claims 2,-3 and 5-7 that depend therefrom, are in condition for allowance and respectfully request that they be passed to allowance.

In addition, Examiner has provided no motivation for the combination of these references. Applicants respectfully submit that Whitehead and Deluca do not, either explicitly or implicitly, provide such a motivation. Whitehead discloses a communication system that adjusts transmit power level in an attempt to avoid interference between multiple communication stations. Deluca suspends the source of power to a receiver when hard decoding errors are detected -- in order to conserve battery power. Absent the teachings of the present invention, the applicant’s fail to see the suggestion to combine these references in the manner that the Examiner has indicated. In particular, the applicant’s see no motivation for one skilled in the art to apply Deluca’s battery power saving method to adjust the transmit power of some remote transmitter to avoid interference, as disclosed in Whitehead. For this reason alone the applicants believe that claim 1, and claims 2,-3 and 5-7 that depend therefrom, are in condition for allowance and respectfully request that they be passed to allowance.

Claims 13 and 29 include similar limitations to claim 1, which has been shown to overcome the present rejection. The applicant believes that the same reasons that distinguish claim 1 over the cited prior art are applicable in distinguishing claims 13 and 29 over the same art. The applicants believe that Claims 13, 29 and claims 14, 17-18, 30 and 32 that depend therefrom are in condition for allowance and respectfully request that they be passed to allowance.

4. Claims 3, 9, 15, 19-29, 27-28, and 30 were rejected under 35 USC § 103 (a) as being unpatentable over Whitehead (U.S. Patent No. 5,732,077) in view of Deluca (U.S. Patent No. 5,144,296 and further in view of Park (U.S. Patent No. 6,212,364).

Since each of these claims are dependent upon a base claim which has been shown to be allowable over Whitehead (or Whitehead and Deluca), combining the teachings of Park does not render the present dependent claims obvious. Therefore, the applicant believes that these claims overcome the present rejection.

For the foregoing reasons, the applicant believes that claims 1-3, 5-15, 17-25, 29, 30, and 32-35 are in condition for allowance and respectfully request that they be passed to allowance.

RESPECTFULLY SUBMITTED,

By: /Timothy W. Markison reg. 33,534/  
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CERTIFICATE OF MAILING

37 C.F.R. 1.8

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Date

8-3-05

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*Liane Hudson*